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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 315.

J. S. ODLAND, AS RECEIVER OF THE NATIONAL BANK OF FAIRMONT, WEST VIRGINIA, *Petitioner*,

v.

FAIRMONT SUPPLY COMPANY, A CORPORATION, *Respondent*.

REPLY BRIEF ON BEHALF OF PETITIONER.

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LEE ROY STOVER,
HARRIET BUCKINGHAM,
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I.

FEDERAL QUESTIONS.

If, as Contended by the Petitioner, His Powers and Authority as an Officer of the United States to Take Title to Real Estate Are to be Determined Under the Federal Statute, as in a Code by Itself, the Federal Questions Thereby Presented Are Not Converted Into Nonfederal Questions Solely by Reason of the Fact that in Deciding Them the Courts Below Applied the Law of West Virginia Rather than the National Banking Laws.

The Question of Whether State Law, or the National Banking Law, Should Govern the Primary Issues of Title Presented in the Instant Case, is Itself a Federal Question. Obviously, determination by the State court that State law should control, does not convert Federal questions into non-federal questions; nor does such decision by the State court oust this court of jurisdiction to review the questions presented. *First National Bank* v. *Anderson,* 269 U. S. 341, 346; *Ancient Egyptian Order* v. *Michaux,* 279 U. S. 737, 744, 745; *Schuylkill Trust Co.* v. *Pennsylvania,* 296 U. S. 113, 121; *Carter* v. *Texas,* 177 U. S. 442, 447; *Truax* v. *Corrigan,* 257, U. S. 312, 324, 325; *Norris* v. *Alabama,* 294 U. S. 587, 590; *Great Northern Ry.* v. *Washington,* 300 U. S. 154, 166; *Lovell* v. *Griffin,* 303 U. S. 444, 450; *Ward* v. *Love County,* 253 U. S. 17, 22.

Nature of the Federal Questions Presented, in View of the Controlling Effect of National Banking Law in the Instant Case.

Petitioner does not deny the *general doctrine* that ordinarily the law of the situs, i.e., the law of the state where land is located,—governs questions concerning acquisition of title to land including questions of succession to title upon the death of the land owner. However, it would seem clear that if, either by express provision of the national banking statutes or by implementation of said statutes by court decisions interpreting and construing the same, the issues in the instant case are embraced within the provisions and requirements of the national banking laws as thus implemented, the general doctrine concerning the law of the situs must give way to the paramount provisions of the national banking law as applied to the particular situation presented. It is, of course, settled doctrine that the national banking laws, as interpreted and construed by the courts, constitute a complete system covering not only the organization but also the liquidation in receivership, of national banks, and that state laws cannot be effective when in conflict with the national banking law, or where the state law,

if applied, would defeat the purposes of the national banking law.

Cook County National Bank v. *United States,* (1882) 107 U. S. 445, 448;
Jennings v. *U. S. F. & G. Co.* (1935) 294 U. S. 216, 226;
Davis v. *Elmira Savings Bank,* (1896) 161 U. S. 275, 283;
Yonkers v. *Downey,* (1940) 309 U. S. 590, 596.

It is also settled doctrine that receivers of national banks are officers of the United States and agents of the Comptroller of the Currency, and derive their authority and power and capacity to act from the national banking law (as implemented by court decisions), subject, of course, to appropriate instructions from the Comptroller of the Currency.

Kennedy v. *Gibson, et al.,* (1869) 8 Wall. 498, 504, 506;
In re Chetwood, (1897) 165 U. S. 443, 458;
U. S. v. *Weitzel,* (1918) 246 U. S. 533, 541;
Pufahl v. *Parks,* (1936) 299 U. S. 217, 225;
Cooper v. *O'Connor,* (App. D. C. 1938) 99 F. (2nd) 135, 139, *cert. den.* 305 U. S. 643;
Cooper v. *O'Connor,* (App. D. C. 1939) 105 F. (2nd) 761, 763.

Rule 41 of the Revised Rules of this court requires that the transcript of record shall include, *inter alia,* the opinion of the court below. It is settled doctrine, in view of this requirement, that this court may examine the opinion of the court below to determine the existence and the nature of the alleged Federal question presented to this court for review and to determine whether substantial Federal questions were actually presented to and passed upon by the court below in deciding the case. *Indiana ex rel. Anderson* v. *Brand,* 303 U. S. 95, 98, 99; *Philadelphia Fire Association* v. *New York,* 119 U. S. 110, 116; *Gross* v. *United States Mortgage Co.,* 108 U. S. 477, 486.

Opinion of the Court Below Discloses that Substantial Federal Questions Were Presented to and Decided by the Court Below.

The following extracts from the opinion of the court below definitely establish that the three federal questions enumerated by petitioner (Petition pages 9-10) were presented to, passed upon, and decided by, the court below:

> "In order that the questions involved in this certificate may be properly discussed, it is necessary to consider the effect of the appointment of a receiver for a national banking association by the Comptroller of the Currency, as well as the authority and powers of the receiver so appointed.
>
> "When a national bank becomes insolvent and the Comptroller of the Currency takes charge of its affairs and appoints a receiver, all its assets pass to the possession and control of the receiver in trust to reduce the same to money and apply them as directed by the National Banking Act. U. S. C. A. Title 12, Sections 192 and 194; *Anderson* v. *Cronkleton* (C. C. A. Neb. 1929), 32 Fed. (2nd) 170. The receiver of a national banking association has the power to purchase real estate under the direction of the Comptroller of the Currency, when such is necessary to protect the assets of the insolvent bank. U. S. C. A. Title 12, Sections 198, 199 and 200.
>
> "An insolvent national bank does not lose its corporate identity by the appointment of a receiver. *The First National Bank of Bethel* v. *The National Pahquioque Bank*, 14 Wall. 383, 20 L. Ed. 840. It may still enter into transactions not forbidden by law. 'It is clearly, we think, the intention of the law, that it should continue to exist as a person in law, * * *.' *Chemical National Bank* v. *Hartford Deposit Co.*, 161 U. S. 1, 40 L. Ed. 595, 16 Sup. Ct. 439; *Hiatt* v. *Warren* (5 C. C. A.) 44 Fed. (2nd) 313; *Neely* v. *Planters National Bank of Clarksdale, Miss.* (D. C. N. D. Miss. 1931) 48 Fed. (2nd) 266. It would seem that the powers of a receiver of a national banking association and his capacity to control and deal with the assets thereof are well and fully defined." (R. 145, 146)

* * * * * * * * *

"In the case of *Rinehart, Receiver* v. *Ireland*, 120 W. Va. 599; 199 S. E. 871, also cited by counsel, this Court had under consideration the question of the powers of the receiver of a state bank. The statute which measures the power and authority of the receiver of a state bank is not in terms the same as the statute which defines the powers and authority of the receiver of a national bank. The law under which the receiver of a state bank operates, provides that he shall have all the powers vested in special receivers by general law, thus giving the receiver of a state bank appointed under Code, 31-8-32, wider powers than those given to the receiver of a national bank. The receiver of a national bank is an agent whose authority is limited by law. *Whelan* v. *Blankenbeckler* (5 C. C. A.), 87 Fed. (2nd) 81; *Scott* v. *Armstrong*, (1892) 146 U. S. 499, 13 Sup. Ct. 148, 36 L. Ed. 1059.

"Miller had the power to purchase the real estate here in question, if the protection of the assets of the insolvent association required the same. However, if he used the funds of his trust in purchasing such real estate, he did not have authority to take title to the property in his own name. Since Miller was apparently acting in a fiduciary capacity as receiver of the bank, he exceeded his authority in accepting the deeds herein mentioned, and the legal title to the real estate vested in him individually. We are not aware of any statute which authorizes the receiver of a national banking association to take title from his deceased predecessor by operation of law. There being no such statutory provision, the legal title, upon the death of Miller, passed to his heirs by the laws of descent prevailing in this jurisdiction." (R. 147, 148)

* * * * * * * * *

"However, another question now arises: Does the law of this jurisdiction apply in the construction of a deed conveying land to the receiver of a national bank? It seems that the answer to this question is largely determinative of the result herein. The alienation and transfer of real estate is governed by the law of the state in which the land is located." (R. 146)

Petitioner respectfully submits:

(1) That the questions specified on pages 9-10 of the petition, constitute substantial federal questions which were effectively raised upon the record, and which were presented to and decided by the court below in rendering the judgment now sought to be reviewed.

(2) That the record sufficiently establishes, for purpose of review:

(a) That the lands in question were purchased by petitioner's predecessor,—Robert C. Miller, as Receiver of The National Bank of Fairmont, West Virginia, under authority of the national banking laws (Sections 198-200, Title 12, U. S. C.) by direction of the Comptroller of the Currency, with the approval of the Secretary of the Treasury, and that said lands were paid for by said Miller, as Receiver, from the funds of the Receivership bank.

(b) That title to said lands passed to said Miller in his fiduciary and representative capacity as Receiver, and did not pass to said Miller in his individual capacity.

(c) That after the death of said Miller, title to said lands passed, by operation of the national banking laws, from said Miller as Receiver, to petitioner as successor receiver.

(d) That the judgment of the court below deprives petitioner of property rights asserted by him as receiver under the national banking laws.

The decisions of this court cited at pages 12 and 13 of the respondent's brief for the settled doctrine that the acquisition and transfer of property by *going National banks* is governed by State law, are inapplicable to the petitioner, an officer of the United States acting under the Federal statute. National bank Receivers take title to real and personal property in which the bank never had an interest and could not acquire an interest as in the case of compromises under 12 U. S. C. 67 of the stock assessment liability, an asset of the Receivership and not an asset of the bank.

The respondent suggests that the difficulties here presented can be resolved by a further proceeding in the trial court. But the decision in such a case would not settle the title in the numerous similar transfers in and out of West Virginia where the Receiverships have been closed and no funds remain, nor would it advise the Comptroller whether he must look to the laws of the 48 States and the Territories rather than to the National Banking Act in issuing further instructions to his agents the Receivers.

We again respectfully submit that the petition for certiorari should be granted.

Respectfully,

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Counsel for Petitioner.